

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Claims 1, 2 and 5-14 are pending. Claims 1, 2 and 5-14 have been rejected.

Claims 1, 6, and 9 have been amended. No claims have been canceled. No claims have been added. Support for the amendments is found in the specification, the drawings, and in the claims as originally filed. Applicants respectfully submit that the amendments do not add new matter.

Applicant reserves all rights with respect to the applicability of the Doctrine of Equivalents.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 2, and 5-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,532,214 to Rumsewicz ("Rumsewicz") in view of U.S. Publication No. 2002/0169880 to Loguinov et al. ("Loguinov").

Applicants respectfully submit that claim 1 is not obvious under 35 U.S.C. § 103(a) over Rumsewicz in view of Loguinov.

Claim 1 has been amended to include at least one resonance point of a performance metric that exhibits improved network performance metrics is determined at the control point by monitoring the performance metric and scanning across a range of bandwidths until an inflection point in the performance metrics is observed indicating that the at least one resonance point is reached so that one or more of the network performance metrics are optimized.

It is respectfully submitted that neither Rumsewicz, nor Loguinov discloses such limitations of amended claim 1.

The Examiner acknowledged that "Rumsewicz does not teach or suggest determining at least one resonance point that exhibits improved network performance metrics at the control point by scanning across a range of bandwidths until one or more of the network performance

metrics is/are optimized, as recited in amended claims 1, 6, and 9...”(Office Action, page 2, 04/06/07).

Rumsewicz, in fact, discloses determining when congestion or overload occurs in a network (col. 1, lines 45-49).

Loguinov, in contrast, discloses estimating of the bottleneck bandwidth in the Internet. More specifically, Loguinov discloses transmitting packet bursts, computing samples of bandwidths from the bursts, and determining the best bottleneck bandwidth from these samples of bandwidths (Abstract, paragraph [0011], [0030], claim 1), and fails to disclose at least one resonance point of a performance metric that exhibits improved network performance metrics is determined at the control point by monitoring the performance metric and scanning across a range of bandwidths until an inflection point in the performance metrics is observed indicating that the at least one resonance point is reached so that one or more of the network performance metrics are optimized, as recited in amended claim 1.

It is respectfully submitted that Rumsewicz does not teach or suggest a combination with Loguinov, and Loguinov does not teach or suggest a combination with Rumsewicz. It would be impermissible hindsight, based on applicants’ own disclosure, to incorporate the system of controlling the traffic congestion of Rumsewicz into the system of estimating the bottleneck bandwidth of Loguinov. Moreover, even if Rumsewicz and Loguinov were combined, such a combination would still lack at least one resonance point of a performance metric that exhibits improved network performance metrics is determined at the control point by monitoring the performance metric and scanning across a range of bandwidths until an inflection point in the performance metrics is observed indicating that the at least one resonance point is reached so that one or more of the network performance metrics are optimized, as recited in amended claim 1.

Given that amended claims 6 and 9 contain limitations that are similar to the discussed limitations of amended claim 1, applicants respectfully submit that amended claims 6 and 9 are not obvious under 35 U.S.C. § 103(a) over Rumsewicz in view of Loguinov.

Because claims 2, 5, 7-8, and 10-14 depend from amended claims 1, 6, and 9 respectively, and add additional limitations, applicants respectfully submit that claims 2, 5, 7-8, and 10-14 are not obvious under 35 U.S.C. § 103(a) over Rumsewicz in view of Loguinov.

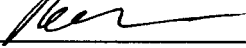
CONCLUSION

It is respectfully submitted that in view of the amendments and arguments set forth herein, the applicable rejections and objections have been overcome. If there are any additional charges, please charge Deposit Account No. 02-2666 for any fee deficiency that may be due.

Respectfully submitted,

Blakely, Sokoloff, Taylor & Zafman, LLP

Date: 07/06/2007

By: 
Tatiana Rossin
Reg. No. 56,833

1279 Oakmead Parkway
Sunnyvale, California 94085-4040
(408) 720-8300